

CASES AND MATERIALS

ON THE LAW

OF TORTS

PART I

E.R. Alexander

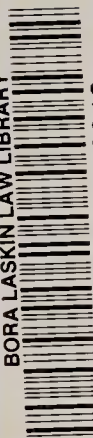
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PART I

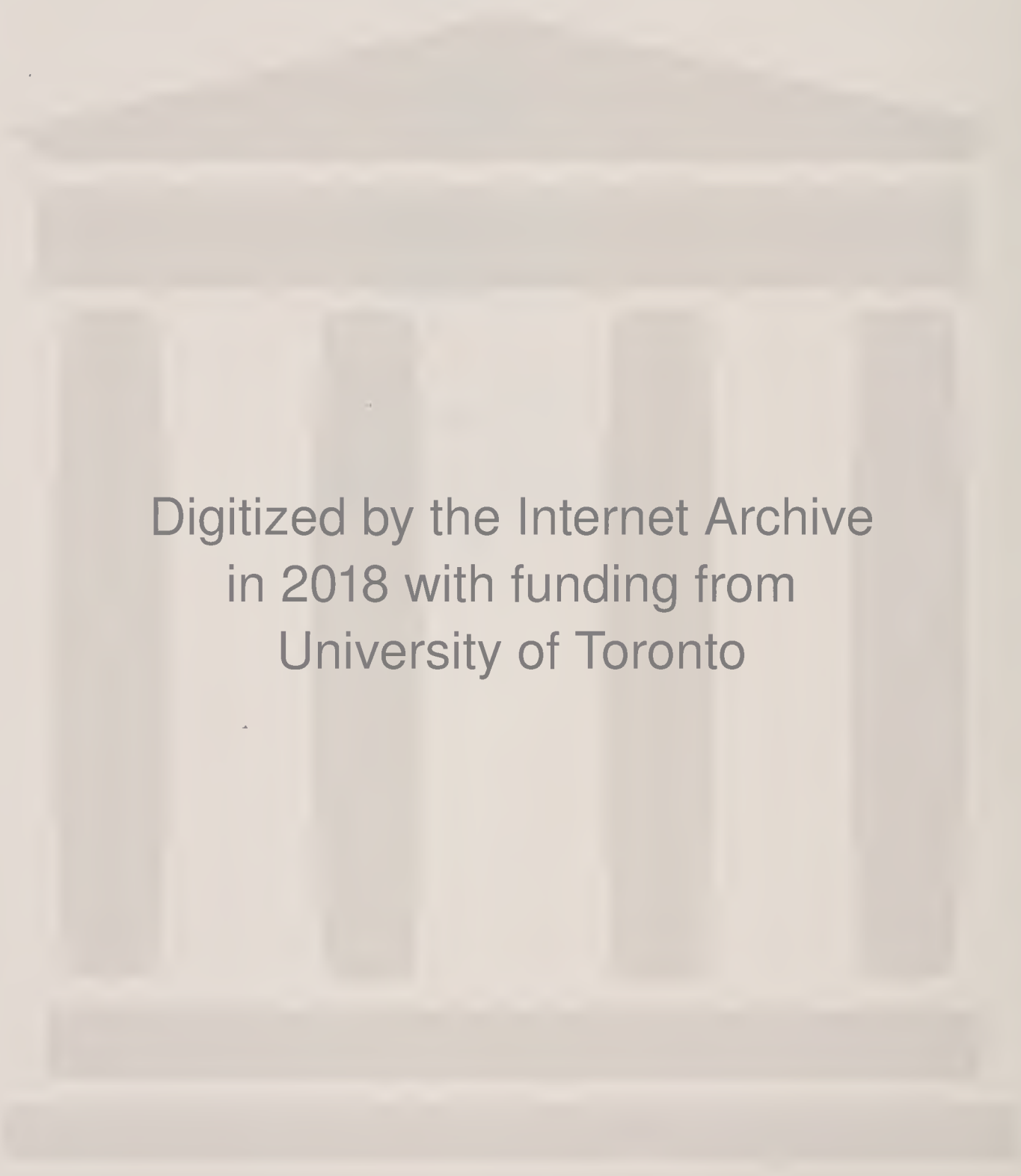
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## CHAPTER I: INTRODUCTION

### Section 1

#### The Nature and Purpose of the Law of Torts

The recognition of the Law of Torts as a sufficiently singular body of law to merit identification by a rubric and segregated consideration in a legal treatise goes back only to about 1860 when an Englishman and an American published books on the subject. The word "tort", of course, was to be found both in English and French long before, and in both languages it meant "wrong". It had equivalents in Spanish and Italian and derived from the Latin "tortus", meaning "twisted or "wrung". Rubrics aside, the kind of problem with which this branch of the law concerns itself has been around as long as people have lived together in society, and has called for, and received, legal attention.

Wherever people live together in society the activities of some invade the interests of others and cause harm, sometimes intentionally, sometimes negligently, sometimes quite by accident. In England, let us say about the year 1066, the harm tended to be inflicted in fairly straightforward fashion upon fairly tangible interests. People struck each other, or threatened to, spoke ill of each other, went on each other's land, and seized possession of or damaged horses and cows, pigs and sheep and various items of inanimate personal property as well. To preserve the King's Peace and prevent aggrieved individuals from relying on self-help (or going without a remedy altogether) the Norman, and especially the Angevin kings sent judges about the country to settle disputes peaceably. In other words, to apply to them a Law of Torts, nameless though it still might be.

These royal courts were not, of course, the first courts in England to deal with such problems. Indeed, the history books all say that the royal courts wrested jurisdiction away from local courts, to the disgruntlement of the barons who included the issue in the Magna Carta, in the long run to no avail. But that is another story. The point of concern here is that the royal courts were the first courts developing and applying a law common to all England, thereby giving birth to the title by which the English system of law became known. Prior to the conquest, there had simply never been a central government strong enough to construct such a centralizing and homogenizing institution.

Centuries later, the Common Law system spread round the world with English settlers and colonists and it continues to prevail in the Anglophone provinces of Canada, English-speaking countries, including the United States of America, and numerous other present and former parts of the British Empire and Commonwealth. So the activity of the royal courts in post-Conquest England constituted the genesis of our Law of Torts, albeit the present generation may show scant family resemblance to its distant progenitor.

It is perhaps needless to say that the royal courts were concerned with settling disputes other than those arising out of the injuries inflicted on some by the activities of others. Those other disputes do not concern us much in this course, however, and so, our focus is almost exclusively on the injuries, the kind of conduct causing them, and what the courts have done about it all. This is a field where the law is mostly judge-made.

Down through the centuries as society developed and grew more complex, the opportunities for harmful contact increased, and activities capable of causing harm waxed more numerous, the interests open to be invaded became more diverse and not quite so corporeal. The Law of Torts developed more or less apace. It fell to the industrial revolution of the 18th and 19th Centuries, however, to do for the Law of Torts what Henry Ford did for the automobile: bring it into the big time. It generated new interests and created opportunities and instrumentalities for invading them by bringing more people into the close contact of urban life, putting them to work in factories with machines, sending them travelling on new roads and new rails, and encouraging them to compete for business in the mushrooming field of commerce. It remained for the 20th Century to develop the most destructive activity yet - motoring - and to add to it, the radio, television, the airplane, the computer and various kinds of looking and listening devices. In addition to interests in physical integrity, honour and tangible property already mentioned, the law has come to recognize as worthy of protection interests in emotional tranquility, family relations and various forms of economic and commercial relations and prospects. Neither the list of



activities causing harm nor the list of interests which the law will protect is closed.

In early times, compensation to the injured individual and penalties to the Crown might figure as remedies in the same court proceedings. In other words, not only was there no well-defined Law of Torts, there was not even a clear-cut distinction between criminal and civil law. However, the first treatise of the common law, published in 1187 and attributed to Ranulf de Glanvill, remarked that "some pleas are criminal, and some are civil". Lord Mansfield in Atcheson v. Everitt, (1755) 1 Cowp. 382 at 391, 98 Eng.Rep. 1147 said, "Now there is no distinction better known, than the distinction between civil and criminal law; or between criminal prosecutions and civil actions." Windfield also indicated in 1931 in his treatise, "The Province of the Law of Tort" that, "Tort can be distinguished from crime in that the sanction for crime is punishment, while the sanction for tort is an action for damages."

So now we can say the criminal law proscribes antisocial behaviour under penalty of fine or imprisonment. The Law of Torts concerns itself only with reparation to the individual for the harm done.

Or is it that simple? Consider the following cases.

**LOUDON v. RYDER**  
Court of Appeal [1953] 2 Q.B. 202

APPEAL from the verdict of a jury and judgment given thereon by Devlin J. in favour of the plaintiff for £5,500 damages for trespass and assault committed by the defendant.

The plaintiff's father, Mr. Lewis, in his lifetime, had told her that he proposed to leave her certain property in trust, No. 3 Coleherne Mews, in Kensington. Mr. Lewis died in April, 1950, and in May, 1950, the plaintiff attained 21 years of age. Mrs. Lewis was an executrix or trustee of her husband, and after his death she did not say anything about this declaration of trust; indeed, according to the plaintiff's evidence, her mother had told her that there was nothing for her. The plaintiff and one of her sisters, when at their mother's house after their father's death, opened and looked into a deed-box. In that box they found, inter alia; a document which showed that the plaintiff had become entitled to the flat, No. 3, Coleherne Mews, when she became 21 years of age. The plaintiff took the document out of the deed box and showed it to a solicitor whom she consulted.

Mrs. Lewis, the mother, had let No. 3, Coleherne Mews to a Mr. Loudon, to whom the plaintiff became engaged to be married. Mr. Loudon, on April 29, 1951, left the flat temporarily to go to Ireland on business, and the plaintiff went to live there. She changed the locks, and was there in possession of the flat on May 28, 1951, when she received a message from Staines, where Mrs. Lewis was then residing, "that they were going to "break into the flat." Thereupon, the plaintiff barricaded the door of the flat, which was over a garage in the mews, and filled a pail half full of water. In the course of the morning there arrived in the mews in a motor-car the plaintiff's mother, Mrs. Lewis, who remained in the motor-car, her gardener, and Ryder, the defendant. The defendant was a friend of Mrs. Lewis and spoke in broken English.●●●

The defendant and the gardener tried to enter the flat by the door: they could not. Thereupon a ladder was found and was